IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL REVISION APPLICATION NO.229 OF 2006

Shri Madhukar Balkrishna Mahamuni : Petitioner
(Resp. in Appeal &
Plaintiff in Suit)

V/s.

Sadashiv Mahadeo Mahamuni & Ors. : Respondents
(Appellants in Appeal
& Defendants in Suit)

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Mr.Dilip Bodake for the petitioner.

Mr.R.G.Ketkar for respondent nos.1B to 1H.

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CORAM : S.A.BOBDE, J.

DATE : AUGUST 13, 2007.

P.C.

1. This Civil Revision Application is against the order condoning delay of about six years, two months and 20 days in filing the appeal.

2. The lower appellate Court has mainly condoned the delay on the ground that for a long time, the applicant no.1 had been suffering from cancer of the mouth and was practically bedridden. Apparently, the applicant no.2 is mentally challenged. The lower appellate Court seems to have further accepted the version of the petitioner that

he had been advised by his Advocate that instead of filing an appeal, it would be better to contest the matter at the stage of execution. Another reason given by the lower appellate Court is that the applicants did not have enough funds. Mr.Bodake, the learned counsel for the petitioner, submits that the ground that there was no fund for filing the appeal was not raised in the application for condonation of delay and, therefore, could not have been taken into account and, hence, the order is vitiated by a material irregularity. Though the ground is not taken in the application for condonation of delay, I find that the order condoning the delay is not on this ground alone, but it is mainly on the other grounds i.e. the illness of the applicant and incorrect legal advice.

3. In the result, it appears that the decision of the lower appellate Court is based on findings of facts which are based on cogent evidence. No material irregularity is shown. The Revision Application is not liable to be entertained. However, in the interest of justice, I consider it appropriate to direct the respondents to pay costs in the sum of Rs.10,000/-, in addition to costs of Rs.5,000/- already imposed by the appellate Court.

4. The Civil Revision Application is disposed of accordingly. All questions on merits, including the locus standi of the respondents, are left open.

S.A. BOBDE, J.